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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,158	02/26/2004	Andrew Jay Bean	3638-116 (AMK)	9151
23117 7590 11/23/2009 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
CHIN SHUE, ALVIN C				
ART UNIT		PAPER NUMBER		
3634				
MAIL DATE		DELIVERY MODE		
11/23/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: ANDREW JAY BEAN and JAMES LATIN SMITH

Application No. 10/786,158
Technology Center 3600

Mailed: November 23, 2009

Before Deborah L. Perry, Supervisory Paralegal Specialist, Review Team.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on November 2, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

EXAMINER'S ANSWER, EVIDENCE RELIED UPON

Section 1207.02 of the *Manual of Patent Examining Procedure*

(MPEP) (Eighth Edition, Rev. 6, September 2007) states:

(A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

. . . .

- (8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and in the case of nonpatent references, the relevant page or pages.

The Examiner's Answer mailed June 9, 2009, includes new evidence in the "Evidence Relied Upon" section, JLG Inc.: "Ultra Series Articulating and Telescopic Boom Lifts", which is not cited in the Examiner's Answer's grounds of rejection of Claims 1-9, 11, and 12 and was not previously introduced in the Final Office Action. Correction is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) vacate the Examiner's Answer mailed June 9, 2009; and
- 2) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

Application No. 10/786,158

DLP/bar

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